THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. Nos. 4704 and 10085 of 2005

Common Order:

Since both the writ petitions arise out of the same award, they are being disposed of by this common order.

These two writ petitions are filed assailing the award dated 10.09.2004, passed by the Labour Court in I.D. No. 38 of 2002 - W.P. No. 4704 of 2005 is filed by M/s. Techno Electrics contending that the Labour Court, having concurred with the findings of the enquiry officer that the charges leveled against the workman are proved, ought not to have interfered with the punishment awarded by the disciplinary authority and directed them to reinstate the workman into service. While W.P. No. 10085 of 2005 is filed by the workman contending that since the Labour Court ordered his reinstatement into service, it ought to have granted full backwages and attendant benefits and denying the same is illegal and arbitrary.

For the sake of convenience, the parties hereinafter shall be referred to as they are arrayed in W.P. No. 4704 of 2005.

The 2nd respondent-workman was appointed as Security Guard in the petitioner-company on 01.06.1987. On 09.11.2001 he was issued a charge sheet-cum-suspension order alleging that he is willfully quarrelling with his co-workers by threatening and abusing them and creating disturbance in the company premises. He submitted his explanation denying the charges leveled against him. Thereafter, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry, submitted his report stating that the charges leveled against the 2nd respondent-workman are proved. Based on

the enquiry report, a notice was issued to the 2nd respondent-workman to show cause as to why she shall not be dismissed from service. The 2nd respondent-workman submitted his explanation thereto. Upon consideration of the same, the petitioner-company, passed an order dated 30.03.2002 removing the 2nd respondent-workman from service. Assailing the said removal order, the 2nd respondent-workman raised an industrial dispute in I.D. No. 38 of 2002, and the Labour Court, vide award dated 10.09.2004, set aside the order of removal, and directed the petitioner-company to reinstate the 2nd respondent-workman into service afresh without any back wages and any other attendant benefits. Questioning the said award the petitioner-company filed W.P. No.4704 of 2005, while the 2nd respondent-workman filed W.P. No. 10085 of 2005 against the said award, insofar as it denied back wages and attendant benefits.

The learned counsel for the petitioner-company submits that the charges leveled against the 2nd respondent-workman stood proved in the enquiry, and the Labour Court having concurred with findings of the enquiry, ought not to have interfered with the punishment of removal from service imposed by the disciplinary authority on the 2nd respondent-workman, and committed an error in directing his appointment afresh.

The 2nd respondent-workman, who appeared and argued in person, submitted that the Labour Court, having set aside the order of removal passed by the disciplinary authority, ought to have directed his reinstatement into service with all consequential benefits, and it committed an error in ordering appointment afresh.

Heard the learned counsel for the petitioner-Company and the

2nd respondent-Workman, who argued in person.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

As can be seen from the award of the Labour Court, the 2nd respondent-Workman did not allege any procedural irregularities in the conduct of the domestic enquiry, and in fact, the counsel represent him filed a memo dated 10.06.2003 before the Labour Court stating that the domestic enquiry may be treated as valid. Therefore, the findings of the enquiry have become final. The 2nd respondent-workman was charge sheeted alleging that he is willfully quarreling with his co-workers by threatening and abusing them and creating disturbance in the company premises. In the enquiry, the charges leveled against the 2nd respondent-workman stood proved. On the basis of the enquiry report, the petitioner-company issued a show cause notice to the 2nd respondent-workman, and considering the explanation submitted by him thereto, the petitioner-company passed order of removal. The Labour Court, on re-appreciation of the entire material on record, though found that the conduct of the petitioner in quarrelling with his colleagues and raising union matters, disturb the

peaceful atmosphere in the factory premises, but felt that the punishment of removal from service imposed by the petitioner-company was not proportionate to the gravity of misconduct, and directed the petitioner-company to appoint the 2nd respondent-workman afresh.

It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons, and that if the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of punishment.

In the instant case, as can be seen from the award, the 2nd respondent is a union leader, and his conduct of quarreling with his colleagues, is a result of his raising union matters, and though such disputes affect the peaceful atmosphere of the company, but the fact remains, such disputes are not common between the unions, where the leaders owing allegiance to the respective unions, vie with each other to woo voters. Be that as it may, the Labour Court taking into consideration the nature of charges, felt that the punishment of removal was disproportionate to the proved misconduct, and in exercise of the discretion vested in it under Section 11-A of the Industrial Disputes Act, 1947, ordered his appointment afresh. It is not the case of the petitioner-company that the Labour Court has no power to modify the punishment imposed by it where it feels that the punishment imposed is disproportionate to the proved misconduct. Since the Labour Court in exercise of its discretion vested in it under Section 11-A of the Industrial Disputes Act, 1947 had directed appointment of the

2nd respondent-workman afresh, and having regard to the certiorari jurisdiction of this Court under Article 226 of the Constitution of India, which precludes this Court from acting as an appellate authority,

I see no reason whatsoever to interfere therewith with the award passed by the Labour Court, directing the petitioner-company to appoint the 2nd respondent-workman afresh, and more so when the proved misconduct does alleged against the 2nd respondent-workman does not relate to any misappropriation of funds, dishonesty or loss of confidence, and also considering the submission made by the petitioner that he has three children and that because of his removal from service, he had suffered a lot, and also the undertaking given by him that he would not indulge in any acts which would disturb the peaceful atmosphere of the factory premises.

Since this Court refused to interfere with the award passed by the Labour Court, and having regard to the fact that the Labour Court had directed appointment of the 2nd respondent-workman afresh, the relief of reinstatement claimed by the 2nd respondent-workman, with all consequential benefits, in the writ petition filed by him, cannot be granted.

For the foregoing reasons, there are no merits in the writ petitions, and they are accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 18th September 2007.
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[1] AIR 2003 SC 3044=2003AIR SCW3872